U.S Soccer Federation Case Study

Alternative Dispute Resolution in Sports The past decade has seen an increased emphasis on using ADR to resolve sport disputes. For example, mediation is commonly used in federal court cases and was ordered in Morgan v. U.S. Soccer Federation, Inc. (2019) to attempt to resolve the lawsuit filed by several female national team players against the US Soccer Federation for alleged equal pay discrimination under the Equal Pay Act and intentional gender discrimination under Title VII. Mediation talks collapsed and the parties were unable to come to a resolution (Das, 2019). The players' case continued toward trial in the federal district court pursuant to their alleged claims. Ultimately, the federal district judge granted the federation's motion for summary judgment on the Equal Pay Act claim, but permitted the Title VII claim to continue to trial (Das, 2020). The players appealed the summary judgment in May 2020 and requested that the trial be postponed pending appeal (Hays, 2020). (Employment discrimination and harassment are discussed in Chapters 5 and 6.) An agreement to arbitrate can appear in an individual contract with an athlete, in a collective bargaining agreement between a players association and an owners group, or in a particular sport organization's constitution and bylaws. Most professional players association rules now require that disputes between agents must be resolved through arbitration. In addition, challenges to league rules and salary disputes between professional athletes and their teams are also subject to arbitration under the league's collective-bargaining agreement. (Salary arbitration is discussed in detail in Chapter 7.) The U.S. Olympic and Paralympic Committee (USOPC) constitution and bylaws and the Ted Stevens Olympic and Amateur Sports Act require that arbitrations arising out of USOPC athletics grievances be administered in accordance with the Commercial Arbitration Rules of the AAA (AAA, "Commencing an arbitration"). (See also the AAA document "Athletes' Frequently Asked Questions for Olympic Movement Disputes Administered by the AAA" at www.adr.org.) The following Focus Case presents a challenge to an arbitration clause in a contract when a party also asserts claims based in tort. Pitino v. Adidas America, Inc. 2018 U.S. Dist. LEXIS 137103 (W.D. Ky. 2018) FOCUS CASE FACTS Former University of Louisville men's basketball coach Rick Pitino filed an action against Adidas America, Inc., asserting a single claim of outrage under Kentucky law. He alleged that Adidas knowingly or recklessly caused him emotional distress when its employees conspired to bribe University of Louisville basketball recruits, as detailed in a criminal complaint filed in the U.S. District Court for the Southern District of New York. Adidas is the University of Louisville's athletic outfitter. In addition, the Endorsement Agreement between Pitino and Adidas provided that Pitino would endorse Adidas products and require the University's basketball coaching staff and players to wear only Adidas products during games, practices, and other team activities. In order to secure top basketball players for college programs with which it was associated, Adidas allegedly bribed recruits, including making arrangements for payments totaling $100,000 for one recruit to join the University of Louisville men's basketball team. Pitino asserted that he "now is publicly perceived as having participated or acquiesced in Adidas' actions" and has suffered "profound embarrassment, humiliation, and emotional injury" as a result of the company's "extreme and outrageous conduct." Adidas maintained that the Endorsement Agreement requires arbitration of Pitino's claim. It pointed to the Agreement's arbitration provision, which states: The parties agree that any dispute concerning the interpretation, construction or breach of this Agreement shall be submitted to a mediator agreed upon by the parties for nonbinding confidential mediation at a mutually agreeable location…. If the parties fail to resolve their dispute through mediation, then the parties agree that the dispute shall be submitted to final and binding confidential arbitration before the American Arbitration Association in Portland, Oregon. Adidas moved to dismiss the case. It argued that Pitino's claim is subject to mandatory arbitration under the parties' Endorsement Agreement. HOLDING Pitino's tort claims are arbitrable and subject to the arbitration clause in the Endorsement Agreement. RATIONALE Typically, the Court's inquiry when a party seeks to compel arbitration is whether the dispute is arbitrable meaning that (1) a valid agreement to arbitrate exists between the parties and (2) the specific dispute falls within the substantive scope of that agreement. Multiple courts, including the Eastern and Western Districts of Kentucky, have held that where the

parties agree to arbitrate they provide a clear and unmistakable delegation of authority to the arbitrator to decide objections related to the scope or validity of the arbitration provision. To determine whether a particular claim or dispute falls within the scope of an arbitration agreement the court asks “if [the] action can be maintained without reference to the contract or relationship at issue” (NCR Corp., 512 F.3d at 814). If so, then the action is likely outside the scope of the arbitration agreement. But a party cannot avoid arbitration simply by renaming its claims so that they appear facially outside the scope of the arbitration agreement. In order to determine whether such renaming has occurred, a court must examine the underlying facts–when an otherwise arbitrable claim has simply been renamed or recast it will share the same factual basis as the arbitrable claim. Here, the facts underlying Pitino’s tort and contract claims are identical: both claims are based on Adidas’s alleged bribing of a University of Louisville basketball recruit or his family. In the tort Complaint, Pitino alleges that “Adidas and its employees engaged in extreme and outrageous conduct by bribing a University of Louisville basketball recruit, or his family, to join the University of Louisville men’s basketball team” and that Adidas breached its duties of good faith and fair dealing by conspiring with others to bribe the family of a University of Louisville basketball recruit. Moreover, there is a “strong presumption in favor of arbitration,” Id. at 813, and thus “any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration,” particularly where–as here–the arbitration clause is broad. Given this standard and the shared factual basis between the claims, the Court finds that the claim asserted here is “at least arguably covered by” the Endorsement Agreement. Pitino v. Adidas reinforces the strong policy favoring arbitration as a dispute resolution mechanism for contract disputes and claims closely associated with the performance of the contract. Other disputes involving professional sports, including disputes over partnership proceeds, termination of sports executives, the sale or relocation of a franchise, and payments under executive or partnership agreements, are also frequently resolved through ADR, primarily arbitration. Nevertheless, many issues are tried in the courts. A basic understanding of the fundamentals of legal resources and information can help sport and recreation management professionals work effectively with their legal counsel if litigation occurs. Legal Resources This section describes the many resources available to the public for conducting research on legal issues. Legal resources can be either primary or secondary resources. Primary Legal Resources As discussed earlier, primary resources in law consist of what actually is the law – that is, what may be relied upon in a lawsuit. These include constitutions, statutes, regulations, and case (common) law. Constitutions, Statutes, Regulations The U.S. Constitution provides the framework for the federal government and protects the fundamental rights of all citizens. Its protections of fundamental rights are applicable to the conduct of state governments by virtue of the 14th Amendment (cited as U.S. CONST. amend. XIV). Each of the 50 states has its own constitution, which provides citizens with protections similar to those in the U.S. Constitution (constitutions are cited in the following format: N.Y. CONST. art. X, § x.). Federal statutes are codified in a series of volumes known as the U.S. Code (cited U.S.C. § x (year)). The U.S. Code Annotated (U.S.C.A.) is another series of volumes reporting federal statutes, but adding annotations regarding courts’ interpretations of certain provisions, legislative history, and so forth. The statutes of each state are similarly codified and published. An example is the Revised Code of Washington (cited as Wash. Rev. Code § x (year)). Many of the bound publications of these statutes contain annotations that identify court decisions construing the various sections or provisions of each statute. Recent amendments to the statutes are printed as pamphlets and placed in pockets at the back of the hardbound volumes until the volumes undergo a completely new printing. These pamphlets are known as “pocket parts.” Federal regulations are first proposed in the Federal Register and when finalized are codified in the Code of Federal Regulations (cited as volume XX C.F.R. § x (year)). For example, the gender equity in athletics regulations that implement Title IX are found in 34 C.F.R. § 106.41 (2013). Each state has regulations promulgated by various state agencies, as well. Court Decisions You may wish to read court decisions on a legal issue facing your sport or recreation organization so that you can

determine whether the facts are analogous to your situation and gain an understanding of the courts' rationale for deciding the cases as they did. Court decisions are published in case reporters, which exist for both federal and state court decisions. Public law libraries and libraries at law schools carry hard copies of collections of case reporters and almost all case decisions are readily available from internet based sources. Additional digital resources are also discussed later in this section. Exhibit 2.4 summarizes the citation abbreviations for case reporters for the federal courts. Exhibit 2.4Case reporters for federal courts. Court Reporters Abbreviations U.S. District Courts Federal Supplement (1st, 2nd, & 3rd Series) F. Supp.; F. Supp. 2d; F. Supp.3d U.S. Courts of Appeals Federal Reporter (1st, 2nd, & 3rd Series) F., F.2d, and F.3d U.S. Supreme Court U.S. Supreme Court Reports U.S. Supreme Court Reporter S. Ct. Lawyer's Edition (1st and 2nd Series) L. Ed. and L. Ed. 2d As Exhibit 2.4 shows, U.S. Supreme Court decisions are reported in three different case reporters, of which the official reporter is United States Supreme Court Reports. The most readily available and easiest to use version is the Supreme Court Reporter, and the third option is the Lawyer's Edition. In addition, full-text versions of the Supreme Court's decisions are available at www.supremecourt.gov (see Web Resources). State court decisions are reported in state case reporters, such as the California Reporter. Most law libraries do not carry state case reporters, preferring to save space by carrying only regional reporters, which report court decisions for all the states in a region. Exhibit 2.5 summarizes the regional reporters and the states they include. Exhibit 2.5 Regional case reporters of state court decisions. Regional Case Reporter Abbreviations States Included Atlantic Reporter A. and A.2d CT, DE, ME, MD, NH, NJ, PA, RI, VT North Eastern Reporter N.E. and N.E.2d IL, IN, MA, NY, OH North Western Reporter N.W. and N.W.2d IA, MI, MN, ND, NE, SD, WI Pacific Reporter P., P.2d, and P.3d AK, AZ, CA, CO, HI, ID, KS, MT, NM, NV, OK, OR, UT, WA, WY South Eastern Reporter S.E. and S.E.2d GA, NC, SC, VA, WV Southern Reporter So. and So.2d AL, FL, LA, MS South Western Reporter S.W., S.W.2d, and S.W.3d AR, KY, MO, TN, TX All case reporters are referenced in the same manner: first the volume number, then the name of the reporter, then the page number on which the first page of a particular case begins, and then the abbreviated name of the court and the year of the decision in parentheses. For example, DeFrantz v. United States Olympic Committee is reported at 492 F. Supp. 1181 (D.D.C. 1980), which means that you can find the case in volume number 492 of the Federal Supplement on page 1181, and that the case was decided in 1980 by the U.S. District Court of the District of Columbia. For Supreme Court cases, the name of the Court is not included in the parenthetical because the name of the reporter indicates that a Supreme Court case is being cited – only Supreme Court decisions are reported in the Supreme Court case reporters. Secondary Legal Resources Secondary resources are sources that are not in themselves law but that offer insight into or interpretation of the law. Secondary resources should never be relied upon as legal authority. They include the following: Law Dictionaries Black's Law Dictionary provides definitions of legal terms, including Latin terms and phrases commonly used in the law. Legal Encyclopedias Corpus Juris Secundum (C.J.S.) and American Jurisprudence (Am. Jur.) are legal encyclopedias that work like standard encyclopedias by providing a topical summary of a legal issue and referring the reader to other resources. These are a good place to begin your research if you know very little about your topic. Case Summaries American Law Reports (A.L.R.) covers both state and federal court decisions, providing case summaries as well as annotations with case commentaries and references to related cases. It is useful when you want to use a specific case as a starting point for your research. Restatements The restatements of the law (e.g., the Restatement [Third] of Torts) are written by legal experts who provide comprehensive summaries of the law on a broad topic such as torts. They contain exhaustive explanations and examples of application. These are most useful to someone who already has a working familiarity with the relevant area of the law. Often courts will rely on the restatements as a highly persuasive authority – although still not law – because they are written by the foremost legal analysts in their areas of expertise. Treatises and Hornbooks Treatises and hornbooks are scholarly books written by expert legal scholars that provide an in-depth treatment of a legal topic. For example, Prosser and Keeton on Torts is considered one of the most

definitive treatments of tort law ever written (Keeton, Dobbs, Keeton, & Owen, 1984). You might use a treatise such as this one if you seek comprehensive background knowledge on your topic. A treatise will contain extensive legal analysis and substantial references to other resources on the topic. Law Reviews and Business Publications Law reviews are scholarly journals published by law schools that contain articles written by law professors, practicing attorneys, and advanced law students. Some law reviews focus exclusively on sport, for example, the Marquette Sports Law Review. Articles in law reviews offer extensive analyses of narrow legal topics (e.g., the constitutionality of mass searches of sports spectators). They are a good place to start your research if your topic is a newly developing area of the law or if you already have a working familiarity with the general context of your specific topic. Some other academic journals focus on sport law, the Journal of Legal Aspects of Sport and the American Business Law Journal feature a number of articles on sport. A number of business publications also feature law sections such as the National Recreation and Park Association monthly magazine includes a law review section. Digital Legal Resources The availability and efficiency of Internet-based legal research have grown dramatically as using the Internet has become ubiquitous in our society. Researchers can now perform a great deal of their research by means of a computer or by even using their smartphones or tablets. Both primary and secondary sources are often readily available through a variety of electronic databases and digital resources. Although Internet-based sources may never completely replace a trip to the law library on campus, it would be hard to imagine a sport management student not being able to write a comprehensive legal research paper using sources that are all available electronically. In fact, with the exception of perhaps a legal dissertation, a student should be able to develop a comprehensive understanding of a legal topic area using electronic legal resources exclusively. Nexis Uni is provided through most college and university libraries' electronic databases and is a valuable research tool. It allows you to search top news; general news; company, industry, and market news; legal news; company financial information; law reviews; federal case law; the U.S. Code; and state legal resources. Nexis Uni also includes a feature which will Shepardize a case. Shepard's is a citation system for updating your cases to ensure that you are not relying on out-of-date or overruled law – an essential component of doing legal research. However, it is complex and bewildering until you master it, so you should seek the help of a law librarian for your first attempt. Shepard's lists cases that have cited previous cases, as well as cases that have interpreted specific provisions of statutes. It codes cases according to whether they have been questioned, criticized, followed, reversed, or overruled. Law Blogs Today, law blogs serve an important function when conducting legal research, because a growing number of credible and reputable legal authorities are providing insightful opinions, commentary, and legal analysis via that medium. For example, the SCOTUS blog tracks developments by the Supreme Court. Some legal commentators and scholars now publish their opinions first on their own blogs, providing current analysis of ongoing litigation or discussing new case law developments. Popular law blogs focused exclusively on sport, such as the Sports Law Blog, are a useful legal resource for tracking current legal developments, reviewing credible commentary about legal issues, and linking to additional resources related to legal developments. If used cautiously and properly, legal blogs are quite effective research tools. Websites Websites give you access to many legal resources and are especially valuable in the event that you do not have access to any of the electronic databases. The following is a sampling of law-related websites: Cornell Law School's Legal Information Institute site is searchable for federal statutes (U.S. Code), state statutes, and Federal Rules of Civil Procedure, as well as federal and state court decisions (www.law.cornell.edu). Two sites, www.findlaw.com and www.law.com, allow registered users to receive daily or weekly email updates on recent developments in topical areas such as sport law. The FindLaw database is searchable for federal and state law. The Gender Equity in Sports Project (University of Iowa) site is searchable for historical information on gender equity in sports (http://bailiwick.lib.uiowa.edu/ge/). Law Crawler – Legal Search is a comprehensive site for legal research (http://lawcrawler.biz.findlaw.com). The Library of Congress "Thomas" website is a

comprehensive site for U.S. legislative materials and treaties (http://thomas.loc.gov/home/thomas.php). The Marquette Law School site provides links to various sport law journals and newsletters, which can be accessed at www.law.marquette.edu by highlighting the Sports Law Institute link and clicking on Publications & Research. The National Archives site is a useful online source for historical materials (www.archives.gov). The National Center for State Courts provides a listing of court websites (www.ncsc.org). The Sport & Recreation Law Association (SRLA) website offers membership information, including participation in an annual conference. (www.srlawebsite.com). The United States Patent & Trademark Office (USPTO) website is searchable for registered trademarks and service marks (www.uspto.gov). Analyzing Legal Information As you realize by now, a myriad of legal resources are available for use in researching information related to legal problems and issues. For a comprehensive discussion of legal research in sport management; See, Moorman & Grady's (2020) Legal Research. In Andrew, D., Pederson, P., & McEvoy (Eds.). Research Methods and Design in Sport Management. Champaign, IL: Human Kinetics. Legal research can be a never-ending maze in which you can waste much time, unless you start with a good research plan. This next section will introduce you to the basics of legal research and organizing legal information. Legal Research Basics Managers are perfectly capable of conducting legal research and using legal research to aid their understanding of the legal issues they face. Generally, you will want your research to flow as follows: 1Identify the specific issue to be research. 2Find the relevant law. 3Read and summarize the relevant law. 4Organize the information you have collected. As you review these four stages in your research process, remember that this is not a linear process. By that we mean legal research tends to be more iterative requiring the researcher to move back and forth through the stages as the information becomes better understood and more applicable to the specific problem or issue facing the manager. The plan outlined below should help keep you focused as you move through these four stages. Stage 1: Identify Your Issue When you identify your issue or problem, the more specific you can be, the better able you will be to narrow the parameters of your search for the relevant law. One strategy is to assess the facts of your problem by placing them in the following categories: Parties Objects Places Basic issue of the case Defenses Relief desired This process of categorizing the facts will often suggest the specific legal issues that need to be researched. For example, let's categorize the following set of facts: "Big Mucky Muck the Giant Duck," the team mascot for the Seattle Ducks, was up in the stands entertaining the spectators with his antics, when one of the spectators seated on the third base line was hit in the face by a batted foul ball that he did not see coming because he was watching the Duck's antics. His eye socket was shattered, resulting in $25,000 in medical expenses. What are the legal issues involved here? Parties: injured spectator; stadium management Objects: mascot entertainer; batted foul ball Place: spectator at baseball game seated on third base line; jurisdiction in the state of Washington Basic issue: Is management potentially liable to spectators for negligence? Possible defenses: contributory negligence; assumption of risk Relief sought: damages for injury After categorizing the facts in this way, we can identify some of the specific legal issues involved: Does stadium management owe a duty of care to baseball game spectators to protect them from batted foul balls? If so, can management defend itself by arguing that spectators assume the risks inherent in being a baseball game spectator? If so, does employment of a mascot who entertains in the stands create an enhanced risk to spectators that they do not assume as an inherent risk? If so, can the injured spectator recover damages for injury? If so, in what amount? How does this jurisdiction determine the amount of blame, and thus the amount of damages, for which the defendant is responsible? Once you have identified some specific legal issues, a law librarian, law professor, or other legal expert can help you identify any relevant legal issues you may be unaware of and help you determine keywords, phrases, and legal terms of art that will increase the efficiency of your search for relevant law. Stage 2: Find the Relevant Law Approaches to finding the law that is relevant to your issue will vary depending upon your level of familiarity with that area of the law and your proficiency in legal research. For example, if you are fairly familiar with negligence law in the context of sport, you might go

directly to an electronic database such as NEXIS UNI and immediately begin searching for relevant cases. If you are unfamiliar with the topic, however, you might wish to gain some background knowledge to develop a context for understanding the specific legal issues involved. A legal encyclopedia can be a good place to start, or, if the issue is relatively new, reading a few recent law review articles will provide you with different analyses of your topic. Treatises or hornbooks may also be useful at this stage. Once you have acquired some comfort with the overall context, you can use A.L.R. to find relevant cases or the annotations (if you have a statutory issue) in the U.S. Code Annotated to find cases interpreting relevant statutory provisions. You can also use the plain language search function of a computerized database such as NEXIS UNI to begin to find cases. For example, you might click on the link for "Cases," and then the link for "State Cases," and enter a particular jurisdiction of interest, say California. Then, using a natural language search, type first-level keywords, for example, "inherent risk," into the Keyword Search Terms box. This broad of a search will produce more than 2,000 results. So you can either narrow your search by searching within results using narrowing keywords, for example, "baseball mascot" or you could try your initial search again this time using some combination of search terms such as "inherent risk" AND "baseball" AND "mascot". This search will produce fewer than 20 results and a much more manageable number of cases to review to find a case dealing with your precise issue: Lowe v. California League of Professional Baseball, 1997 Cal. App. LEXIS 532 (Cal. Ct. App. 1997). Stage 3: Read and Summarize the Relevant Law Once you have collected the cases and other primary resources in Stage 2, you must read them carefully and evaluate them for their relevance to your issue. Evaluation of the relevance of cases is made much easier by briefing each case. A case brief is a succinct one- or two-page summary of a case that enables you to assess and compare it quickly with other cases. See Exhibit 2.6 for the key elements of a case brief. Many of the Focus Cases you will read throughout this text will follow a similar format as well. As you read, take notes on cases cited in the case you are reading, and read those cases, too. Repeat this process until you find that you are turning up no new information and the sources are becoming repetitious, referring to the same legal principles and sources for support. At this point, you can feel reasonably sure that you have "closed the loop" and will not turn up any more relevant information. Exhibit 2.6Elements of a case brief. Facts Briefly describe (in a few paragraphs) the facts (background) of the case. This is usually described at the beginning of the case. What happened that brought this case to court? You don't have to repeat all the Facts, just the really pertinent facts that are relevant to the court's decision. Issue. What is the court deciding in this case? The issue is usually one or two sentences, found in the middle of the case. The case often includes language such as "the issue before the court is…." The issue is often stated in the form of a question but may also be posed as a "whether" statement. Example: Is a high school athletic association a place of public accommodation under Title III of the Americans with Disabilities Act (ADA)? Example: The issue is whether a high school athletic association is a place of public accommodation under Title III of the Americans with Disabilities Act (ADA). Holding What did the court decide? This is also known as the ruling of the court. It is usually only a sentence (or even just a few words) long and is usually the last sentence in the case. Ideally, this is just a positive restatement of the issue – it answers the question the court is deciding. Example: "Yes, a high school athletic association is a place of public accommodation subject to Title III of the ADA." Rationale Why did the court decide the way it did? What were the reasons for the court's decision? The court will usually look at statutes, Constitutions, and prior court precedents in describing its rationale. The rationale is the most important part of the brief because it explains WHY the decision/outcome was reached which enables you to determine whether the same reasoning use by the court in this decision will apply in other similar situations that arise later on. Remember, a case goes to a full trial only for an issue that has not yet been squarely resolved in prior cases, and the reasoning in prior cases that have precedential value is what the courts will use as they apply the existing law to your new issue. Understanding the rationale of the courts in the cases you have collected allows you to guess how a court is likely to view your attempt either to analogize or to distinguish your case from past precedent.

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When organizing or trying to understand the court's rationale, it may be helpful to break the rationale down using the following approach: Rule, Application, Conclusion. Don't forget to search the law of jurisdictions other than your own to find persuasive precedent that may bolster your position. At this point, it would be a good idea, now that you have a grasp of the relevant law, to review all the primary sources you have found, refine the issue(s) of interest, and read or reread some law review articles or other secondary sources for their analytical perspectives. As you read the rationale of an opinion, look for language that identifies what the court identifies as the relevant law or legal standard applicable to the facts surrounding the legal issues. Also note how it makes the arguments justifying its conclusions on those issues. See Exhibit 2.7 for an example of a concise case brief. Exhibit 2.7Sample case brief. E.M. v. House of Boom Ky, LLC 575 S.W.3d 656 (Ky. 2019) FACTS House of Boom is a for-profit trampoline park in Louisville, Ky. The plaintiff purchased a ticket for her 11-year old daughter. She also signed a release of liability releasing all claims by herself and her minor child. Her daughter was injured when another girl landed on her after jumping off a 3-foot edge. The mother sued on behalf of her daughter for the injury. House of Boom moved for summary judgment relying on the release signed by the mother. Issue: Whether a parent has the authority to sign a pre-injury exculpatory agreement or waiver on behalf of her daughter who was injured by another child while participating in the activities sponsored by a for-profit company. HOLDING No, a parent does not have the authority to sign a pre-injury waiver on behalf of a minor child terminating the child's right to compensation for injuries sustained while participating in activities sponsored by a for-profit company. RATIONALE Rule: Pre-injury waivers are not per se invalid in the Commonwealth but are generally disfavored and are strictly construed against the parties relying on them. The general common law in Kentucky is that parents have no right to compromise or settle their child's cause of action or no right to enter contracts on behalf of their child absent special circumstances or valid public policy justifications. Application: This case does not present any special circumstances that would support a change in the common law related to protection for for-profit entities from liability based on pre-injury waivers signed by parents. Further, House of Boom's stated policy concerns about post-injury settlement agreements is not applicable to this situation since the pre-injury waiver is treated with much more suspicion than a post-injury release. A pre-injury waiver may remove an important incentive for an entity to act with reasonable care; these clauses are generally unilaterally imposed without genuine bargaining. House of Booms second public policy argument was that the waiver encourages affordable recreational activities. However, the public policy in that situation is applicable to non-commercial entities, not for-profit entities. The same public policy that deals with voluntarily opening private property or school district's property to allow community use does not apply to commercial entities. A commercial entity has the ability to purchase insurance and spread the cost among customers. It also has the ability to train it employees and inspect its premises to protect itself from negligence. A child does not have the ability to protect themselves from the negligence of others within the confines of a commercial establishment. Permitting these kinds of waivers would serve as a disincentive for commercial establishments to take reasonable steps to avoid injuries. Conclusion: Under the common law of this Commonwealth, a parent has no authority to enter into contracts on a child's behalf, and we find no relevant policy justification to abrogate the common law to permit enforcement of an exculpatory agreement between a for-profit entity and a parent of a minor child. Competitive Advantage Strategies Putting Basic Legal Strategies to Work If you are in doubt as to whether you need to seek legal advice, conducting some preliminary legal research on your issue should aid you in making that determination. Be careful not to apply the fruits of your legal research to a situation not germane to that body of law. Sometimes nonlawyers will attempt to extend a legal principle to a problem governed by a completely different area of the law because doing so appears logical from an untrained perspective. When in doubt, consult a lawyer instead of relying on your own conclusions. Use a preventive law approach and consider retaining a lawyer to assist in drafting contracts and policies, as well as risk management planning, for your sport or recreation organization. Such an approach can

contribute to management success and increased profitability by helping to create and foster a safe and thus appealing business environment, and by helping you avoid costly litigation. A preventive approach depends on effective communication between a knowledgeable client and a lawyer. Be sure you have a working understanding of the basic legal issues facing your organization or event. To facilitate clear communication with your attorney, know what information is relevant to enable him or her to provide the best legal advice. Stage 4: Organize Your Information You are now ready to put your information into a format that will enable you to resolve your legal problem or formulate your position on your legal issue. You will want to summarize the facts related to your problem, explain the legal issues identified, discuss what law and legal standards are applicable to resolve this problem, and analyze whether and how the law will apply to your situation or problem. It can be a daunting task to organize all the general information, cases, statutes, legal commentary, and legal or academic journal articles, but it is necessary to do so if you are going to effectively answer your research question. Conclusion You now have an understanding of the U.S. legal system and are acquainted with the basics of how to use and access legal information. If your organization is confronted with a decision to make or policy to formulate that has legal ramifications, doing some research on specific relevant legal topics will give you a good sense of what your options are. Again, it is critically important that you remember that, if you are not a trained lawyer, you should rely on your research only for informational purposes. Once you are familiar with the legal issues relevant to your topic, you should seek out competent legal advice to make important policy decisions. A working knowledge of the legal issues you face will help you to work successfully with your lawyer in organizational planning, policy-making, and risk management. It should also make your sport or recreation organization more attractive to your clientele and help you avoid financial loss due to litigation that might have been avoided. Discussion Questions 1When the higher court in a given jurisdiction declines to hear an appeal, how does that affect the decision rendered at the level below? 2 In your own words, explain the difference between a motion for summary judgment and a motion to dismiss for failure to state a claim. What precedential value do decisions on these motions have? 3In your own words, explain the difference between binding precedent and persuasive precedent. 4What are the pros and cons of a common law legal system founded on the principles of stare decisis and binding precedent? 5What is the difference between mediation and binding arbitration? Why might parties in a dispute choose alternative dispute resolution instead of litigating in court? 6What is the difference between primary and secondary legal resources? 7How would a manager faced with a potential legal problem benefit from conducting some legal research and reading some relevant cases? Learning Activities 1Using NEXIS UNI or a similar online database, find a case on a sport law topic assigned by your professor and write a case brief summarizing it. 2Consider the following sample statute: NO VEHICLES ALLOWED IN CITY PARKS (Pullburg City Ordinance 1234.5(6)(a)) What is the plain meaning of this statute? Does it apply to Tonka dump trucks? Bicycles? Baby strollers? Skateboards? Motorized scooters? Motorized wheelchairs? Emergency vehicles? Medi-vac helicopters? Is the statute more ambiguous than you initially thought? What might have been the legislative intent behind the law? This exercise illustrates the interpretive nature of the law. It also makes clear why we need administrative agencies to issue regulations containing clear definitions of key terms and courts to render rulings interpreting how statutes should be applied. 3On the website of the National Center for State Courts (www.ncsc.org), find information on the state court structure and hierarchy for the state in which you reside. Case Study 1Consider the following list of imaginary binding case precedents in your jurisdiction. Use it to analogize or distinguish the “cases” listed below. 2009 – Discrimination against reds is not allowed. 2014 – It is acceptable to exclude squares. 2020 – Discrimination against greens is not allowed. Case A: You feel you have been discriminated against because you are purple. How would your lawyer argue your case? What would the opposing lawyer argue? Case B: You feel you have been discriminated against because you are a purple square. How would your lawyer argue your case? What would the opposing lawyer argue? Case C: You feel you have been discriminated against because you are

a triangle. How would your lawyer argue your case? What would the opposing lawyer argue? Case D: You feel you have been discriminated against because you are a translucent sphere. How would your lawyer argue your case? What would the opposing lawyer argue? 2Repeat the steps above, but make the following substitutions: Native Americans for reds Men for triangles Black people for purples Women for squares Hispanic or Latinos for greens Israeli Jews for translucents Transgender persons for spheres References Cases DeFrantz v. USOC, 492 F. Supp. 1181 (D.D.C. 1980). E.M. v. House of Boom Ky, LLC 575 S.W.3d 656 (Ky. 2019). Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs, 259 U.S. 200 (1922). Flood v. Kuhn, 407 U.S. 258 (1972). Grove City College v. Bell, 465 U.S. 555 (1984). Hispanic College Fund, Inc. v. NCAA, 826 N.E.2d 652 (Ind. App. 2005). Johnson v. Florida High Sch. Activities Association, 899 F. Supp. 579 (M.D. Fla. 1995). Lowe v. California League of Professional Baseball, 1997 Cal. App. LEXIS 532 (Cal. Ct. App. 1997). Mid-South Grizzlies v. NFL, 720 F.2d 772 (3d Cir. 1983). Morgan v. United States Soccer Federation, Inc., Case No. 2:19-cv-01717 (C.D. Calif., March 8, 2019). Pryor v. NCAA, 288 F.3d 548 (3d Cir. 2002). Statutes Civil Rights Restoration Act of 1987, 102 Stat. 28 (1988). Other Sources American Arbitration Association. (n.d.). Commencing an arbitration for Olympic Movement and sport doping disputes. Retrieved from www.adr.org/aaa/ShowPDF?doc=ADRSTG_004200. Das, A. (2019, August 14). Mediation talks between U.S. women's team and U.S Soccer break down. New York Times. Retrieved from https://www.nytimes.com/2019/08/14/sports/uswnt-mediation-us-soccer.html. Das, A. (2020, May 1). U.S. women's soccer team equal pay demands are dismissed by judge. New York Times. Retrieved from https://www.nytimes.com/2020/05/01/sports/soccer/uswnt-equal-pay.html. Hays, G. (2020, May 8). USWNT players file appeal against ruling that quashed equal pay claims. ESPN.com. Retrieved from https://www.espn.com/soccer/united-states-usaw/story/4093248/uswnt-players-file-appeal-against-ruling-that-quashed-equal-pay-claims. Keeton, W. P., Dobbs, D. B., Keeton, R. E., & Owen, D. G. (1984). Prosser and Keeton on torts (5th ed.). St. Paul, MN: West Group. Llewellyn, K. N. (1950). Remarks on the theory of appellate decision and the rules or canons about how statutes are to be construed. Vanderbilt Law Review, 3, 395–406. Web Resources www.adr.org ■ This website for the American Arbitration Association provides links to downloadable documents relevant to sport managers. Select Education & Resources, then FAQs, and use the search term "athlete" to access "Athletes' Frequently Asked Questions for Olympic Movement Disputes Administered by the AAA." Also under Education & Resources, selecting the link to ADR Resources and using the search term "athlete" will yield a list of the following documents: "Sports Arbitration, Including Olympic Athlete Disputes," "Commencing an Arbitration for Olympic Movement Disputes," "Olympic Athlete Eligibility, NGB Determination, and Doping Disputes: An Overview," and "Using ADR to Resolve Collegiate Professional and Sport Business Disputes." A search of Rules & Procedures using the search term "Olympic" will give you access to the AAA's rules for the arbitration of Olympic doping disputes ("American Arbitration Association Supplementary Procedures for the Arbitration of Olympic Sport Doping Disputes," amended May 1, 2009, by "AAA Supplementary Procedures for the Arbitration of Anti-doping Rules Violations Summary of Changes." (For the amending document, use the link to Rules Updates.) www.ncsc.org ■ The website of the National Center for State Courts provides information on state court structures and hierarchies. www.oknd.uscourts.gov/summary-trial-process ■ This website contains a sample of the summary trial process in the Oklahoma court system. www.supremecourt.gov ■ The official site of the Supreme Court contains the full text of the court's case opinions. Part II Human Resource Management